

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
F.A.T. INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 80-58

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for the alleged violation of sections 8.02(3), 8.02(4) and 8.02(5) of respondent's Regulation I, came before the Pollution Control Hearings Board, Nat Washington, Chairman, and David Akana (presiding), at a formal hearing in Lacey, Washington, on July 24, 1980.

Respondent was represented by its attorney, Keith D. McGoffin; appellant was represented by Wray Featherstone, Jr., its vice president. Olympia court reporter Betty Koharski recorded the proceeding.

1 Having heard the testimony, having examined the exhibits and
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 F.A.T. Inc., (hereafter FAT) is a corporation formed by three
6 persons. In 1978, the corporation purchased a number of parcels of
7 property located at or near 5604 South Third Street in the City of
8 Everett, Washington. At the time of the purchase, a dwelling and out
9 building were located on the site.

10 II

11 On or about October of 1979, FAT embarked on a plan to build
12 duplexes on the site and entered into a joint venture agreement with
13 another corporation to develop the site. The understanding reached
14 was that the other corporation would demolish the existing buildings
15 and clear the land. Such other corporation would receive the
16 necessary permits and one of the owners of FAT would haul the trash
17 away. FAT did not intend to burn the demolished materials.

18 III

19 The structures on the site were demolished and placed in a pile.
20 The first attempt to haul the trash away was aborted because of the
21 wet ground condition.

22 IV

23 On February 5, 1980, at about 4 a.m. the Everett Fire Department
24 (EFD) responded to a fire upon appellant's site. The EFD believed
25 that it extinguished the fire and left the site. The fire rekindled
26 and the EFD returned to spread the burning pile and extinguish it at
27

1 about 6:35 a.m. Because the fire was burning well in the rainy
2 weather and many gallons of water were used on the fire, the EFD
3 witness believed the fire to have been deliberately started. Upon
4 being told of the fire, one of appellant's owners said that he thought
5 the demolition pile had been removed.

6 V

7 Respondent's inspector, after learning of the fire, visited the
8 site. He saw a 7 foot high, 25 foot diameter pile of demolition
9 materials which included linoleum, tar paper and roofing material.
10 The inspector determined FAT to be the owners of the property in
11 question.

12 For the foregoing events, appellant was sent a notice of violation
13 of sections 8.02(3), 8.02(4) and 8.02(5) of respondent's Regulation
14 I. Following the assessment of a \$250 civil penalty, appellant
15 appealed contending that it did not cause or allow the fire in
16 question.

17 VI

18 Pursuant to RCW 43.21B.260, respondent has filed with this Board a
19 certified copy of its Regulation I and amendments thereto which are
20 noticed.

21 Section 8.02(3) makes it unlawful for any person to cause or allow
22 any outdoor fire containing, among other things, asphalt, petroleum
23 products, paints, and rubber products.

24 Section 8.02(4) makes it unlawful for any person to cause or allow
25 any outdoor fire for the purpose of demolition of materials.

26 Section 8.04(b) provides that it shall be prima facie evidence
27

1 that the person who owns or controls property on which an outdoor fire
2 occurs has caused or allowed the fire.

3 Section 8.02(5) makes it unlawful for any person to cause or allow
4 an outdoor fire in violation of any law of a governmental agency
5 having jurisdiction over such fire. Ordinance 223-73 of the City of
6 Everett, as amended by ordinance 423-76, makes it unlawful for any
7 person to cause or allow an outdoor fire within the city with certain
8 exemptions not here applicable.

9 Section 3.29 provides for a civil penalty of up to \$250 per day
10 for each violation of Regulation I.

11 VII

12 Any Conclusion of Law which should be deemed a Finding of Fact is
13 hereby adopted as such.

14 From these Findings the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 There is insufficient evidence which would show that appellant or
18 its agents did or did not actually start the fire. Accordingly, the
19 presumption of Section 8.04(b), which provides that the owner of the
20 property in question is deemed to have caused or allowed the fire,
21 controls.

22 II

23 Appellant is deemed to have violated sections 8.02(3), 8.02(4) and
24 8.02(5) as alleged.

25 III

26 Puget Sound Air Pollution Control Agency v. Kaiser Aluminum and

1 Chemical Corporation, 25 Wn. App 273 (1980) requires that knowledge be
2 shown as an element of a prima facie civil penalty case, at least
3 until legislation reversing the holding becomes effective. The
4 knowledge element, a requirement here, is not expressly provided in
5 section 8.04(b) but can be demonstrated by the agency.

6 However, knowledge of the facts, circumstances or results of this
7 fire, or information which would lead a reasonable man to believe that
8 such facts exists, was not persuasive in this instance. Accordingly,
9 the imposition of a \$250 civil penalty is vacated.

10 IV

11 Any Finding of Fact which should be deemed a Conclusion of Law is
12 hereby adopted as such.

13 From these Conclusions the Board enters this

14 ORDER

15 The \$250 civil penalty is vacated.

16 DONE at Lacey, Washington, this 7th day of August, 1980.

17 POLLUTION CONTROL HEARINGS BOARD

18
19 Nat W. Washington
20 NAT W. WASHINGTON, Chairman

21 David Akana
22 DAVID AKANA, Member
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